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IN THE

Supreme Court of the United States

October Term, 1984

SHERIFF OF THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, PROSECUTING ATTORNEY FOR THE COUNTY OF NEWAYGO, STATE OF MICHIGAN, STATE OF MARYLAND,

Petitioner,

vs.

MARVIN ROBERT DEUR,

Respondent.

BRIEF OF THE STATE OF INDIANA AND THE COMMONWEALTHS AND STATES OF ALABAMA, ARIZONA, FLORIDA, KANSAS, MISSOURI, NEBRASKA, NEW HAMPSHIRE, NORTH CAROLINA, VERMONT, AND WYOMING

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STATEMENT OF THE CASE

Respondent Deur was indicted by a Maryland grand jury for the crime of manslaughter by motor vehicle.[1] This charge arose from an accident in Frostburg, Maryland which involved a tractor-trailer rig owned by the Respondent.[2] A description of the accident, in a report of the National Transportation Safety Board, discloses the following:

> On February 18, 1981, a tractor-semitrailer loaded with building supplies was traveling eastbound on US Route 40, a two lane mountain highway approaching Frostburg, Maryland. The combination vehicle apparently lost braking control and passed and sideswiped a pickup truck as it descended the steep three-mile grade. It continued eastbound and entered the city limits of Frostburg at a high rate of speed striking eight vehicles and pushing these vehicles into six additional vehicles. The combination vehicle continued eastbound through the crowded downtown business district and finally veered to the right into a three story commercial building after several consecutive vehicular impacts.

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[1] MD Code, art. 27 §388 provides:

> Every person causing the death of another as the result of the driving, operation or control of an automobile, motor vehicle, motor boat, locomotive, engine, car, street, car, train or other vehicle in a grossly negligent manner, shall be guilty of a misdemeanor to be known as 'manslaughter by automobile, motor vehicle, motor boat, locomotive, engine, car, street car, train or other vehicle,' and the person so convicted shall be sentenced to jail or in the house of correction for not more than three years, or be fined not more than $1,000.00 or be both fined and imprisoned.

In effect, Maryland charged that the Respondent's "grossly negligent" acts in Michigan caused the deaths in Maryland in violation of the statute.

[2] The rig was leased to Direct Lines, Inc. and was being operated by one of the corporation's employees at the time of the accident. Under the terms of the lease, the Respondent was responsible for maintaining the vehicle.

> The force of impact drove the tractor and a previously struck vehicle inside the building causing the floor and right front corner to collapse. Three persons were fatally injured and twelve other vehicle occupants sustained injuries of varying degrees. No pedestrians were reported injured.

In addition, the report noted that on April 11, 1978 and February 27, 1981, safety compliance inspections of vehicles owned by Direct Transit Lines, Inc. revealed numerous violations of the Federal Motor Carriers Safety Regulations (FMCSR) including failing to maintain or falsification of drivers' daily logs and failing to keep proper inspection and maintenance records. Further, Officer Donald C. Maiers of the Maryland State Police investigated the accident and concluded:

> Your Affiant believes, based on his personal observations, interviews conducted, and information received, Marvin Robert Duer had *intentionally and knowingly* adopted and enforced a policy of poor maintenance of the vehicle leased to Direct Transit, Inc. and other vehicles similarly leased. These activities of Deur directly contributed to the incident which resulted in the deaths of three persons in Frostburg, Maryland, on February 18, 1981. (Emphasis added).

Subsequently, the Respondent was arrested on a warrant[3] issued by the Governor of Michigan on a request

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[3] The statute, MCL 7803a; MSA 28-1285 (3-1/2) §6 of the Uniform Criminal Extradition Act, which deals with the extradition of non-fugitives and under which the warrant was issued provides:

> The governor of this state may also surrender on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom, and the requirements contained in subdivision (d) and (e) of section 3 of this act shall not apply to such cases.

for extradition by the Governor of Maryland. The Respondent, however, commenced a habeas corpus action to prevent his extradition. The Newaygo County Circuit Court granted the Respondent's petition for habeas corpus and determined that the charging papers did not have the effect of charging him with having committed an act in Michigan intentionally resulting in the crime with which he was charged in Maryland as required by the statute.

In *Deur v. Newaygo County Sheriff*, 125 Mich. App. 642, 336 N.W.2d 852 (1983), the Michigan Court of Appeals ruled that there need not be an intention that a crime result in the demanding state, but rather only that the act committed in the asylum state be intentional and subsequently result in the crime in the demanding state.[4] The Michigan Supreme Court, however, reversed the Court of Appeals and ruled that the non-fugitive extradition provision of the Uniform Criminal Extradition Act requires an accused to have committed an act in the asylum state coupled with an intent that such act result in a crime in the demanding state.

Presently, the Petitioner seeks to obtain a writ of certiorari to review the opinion of the Michigan Supreme Court. The amici states join the efforts of the Petitioner.

INTEREST OF THE AMICIS CURIAE

The Uniform Criminal Extradition Act was written in 1926 to codify the practice of interstate extradition of

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[4] The Michigan Court of Appeals stated:

> The crucial language, therefore, is that portion of §3a which requires that the accused be charged with 'comitting an act in this state * * * intentionally resulting in a crime in the state whose executive authority is making the demand.' The adverb 'intentionally' does not, grammatically or phraseologically, modify the noun 'crime' but the participial phrase "committing an act." To construe the statute otherwise would raise ignorance of the law to the level of a complete defense, and would also mean that deliberate acts not intended to have criminal consequences would carry with them no criminal responsibility.

fugitives, a right created by the United States Constitution,[5] and a process incompletely regulated by federal law. Commissioners' Prefatory Note, Uniform Criminal Extradition Act, 11 U.L.A. 52-53. The purpose of the extradition clause is twofold: to effectuate the principle of comity by compelling each state to arrest a resident who has been indicted in a sister state and surrender custody to the demanding state; and, to hasten the process of doing so by allowing the asylum state only minimal inquiry into the underlying charge. *Michigan v. Doran*, 439 U.S. 282, 287-288, 99 S.Ct. 530, 534-535 (1978). Section 6[6] of the Extradition Act, however, was a creation of the National Conference and was intended to reach extradition of one who commits a crime against the laws of a state by acts done outside of that state—a situation not covered by existing law. Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings 591 (1926). Justice Traynor, in *In re Cooper*, 53 Cal. 2d 772, 776, 349 P.2d 956, 959 (1960) commented on the extradition of persons not present in the demanding state at the time of the commission of a crime:

> Modern communication and transportation facilitate the commission of crimes across state lines.

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[5] The extradition clause provides that: A person charged in any State with Treason, Felony, or after Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. U.S. Const. art. IV, §2, cl. 2.

[6] The Governor of this state may also surrender, on demand of the Executive Authority of any other state, any person in this state charged in such other state in the manner provided in Section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose Executive Authority is making the demand, and the provisions of this act not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

> A criminal who acts in one state to commit crimes in another may pose a far more serious problem to the latter state than one who commits a crime there and then flees from justice. When the criminal who commits his crime entirely in one state flees, he ordinarily poses no threat of additional crimes therein; if extradition fails, there is only frustration of that state's interest in punishing him. In contrast, the criminal who operates from without the state's borders poses a continuing threat. Since his conduct may be undetected or apparently harmless in the state where he acts, the only effective impetus for prosecution may come from the state that suffers the harm. Far more divisive than a state's refusal to extradite a fugitive for a past offense would be its unwitting provision not only of a base of operation but of an asylum for those who commit crimes without being personally present at the place where their crimes are consummated.

Since the extradition clause of the United States Constitution neither requires nor prohibits enactment of state laws governing non-fugitive extradition, enforcement of section 6 is a matter of comity between the states. Commissioners' Prefatory Note, Uniform Criminal Extradition Act, 11 U.L.A. 53.

In the instant case, section 6 of the Uniform Extradition Act requires that an accused, in order to be extradited, must be charged with "committing an act in this state... intentionally resulting in a crime in the state whose executive authority is making the demand." The Michigan Supreme Court and the Respondent have interpreted this provision as requiring an act of commission rather than omission and that the accused must intend that his actions result in the occurrence of a crime in the demanding state. This interpretation, however, is contrary to the letter and spirit of the extradition act and to the interpretations of the section by various jurisdictions.[7] To interpret section 6 in

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[7] Because the extradition act is a uniform law, decisions from other states are valuable for the interpretation of its provisions. *Dutil v. Rice*, 34 Conn. Sup. 78, 82, 376, A.2d 1119, 1121 (1977).

this manner would raise ignorance of the law to the level of a complete defense. Further, an individual engaged in a deliberate act, intended to have no criminal consequence, could escape criminal liability.

All amici states administer criminal justice systems within their jurisdiction. Each state seeks to promote the safety and welfare of its citizens. Indeed, each state has a fundamental interest in appropriately punishing persons who violate its criminal laws. *Bearden v. Georgia*, ___ U.S. ___, 103 S.Ct. 2064 (1983). If the decision of the Michigan Supreme Court is upheld, in this case, a demanding state may only prosecute an individual who has committed an act/omission in the asylum state who has also intended that the act/omission result in a crime in the demanding state. The amici states submit that this is an unwarranted, narrow construction of section 6 of the act. Further, this hypertechnical interpretation is in contravention of the purpose of the interstate extradition laws. As stated by the Nebraska Supreme Court in *Kansas v. Holeb*, 188 Neb. 319, 321-322, 196 N.W.2d 387, 389 (197.):

> Substantial rights of citizens must be protected, but constitutional and statutory provisions relating to interstate extradition must be liberally construed to effectuate their purpose, and courts of one state must avoid a view of their duties so narrow as to afford permanent asylum to offenders against laws of another state.

For the foregoing reasons, the amici states respectfully request that the petition for certiorari be granted.

REASONS FOR GRANTING THE WRIT

The purpose of interstate extradition is to furnish an expeditious and summary procedure for bringing suspects to trial in the state where the alleged offense was committed. *Biddinger v. Commissioner of Police*, 245 U.S. 128, 38 S.Ct. 41 (1917). The extradition clause of the United States Constitution, Article IV, §2, cl. 2, is intended to allow

each state to bring offenders to trial as quickly as possible in the state where the offense was committed. *Crumley v. Sneed* (5th Cir. 1980) 620 F.2d 481, 483. Extradition is intended not as a preliminary inquiry into the merits of a criminal prosecution, but merely as a summary executive procedure by which an accused can be brought before an appropriate tribunal for adjudication. The Constitution does not contemplate that the asylum state will make a determination of guilt or innocence or conduct "the kind of preliminary inquiry traditionally intervening between the initial arrest and trial." *Michigan v. Doran*, 439 U.S. 282, 288, 99 S.Ct. 530, 535 (1979).

After the governor of the asylum state has granted extradition, a court, in reviewing a petition for habeas relief, may decide only "(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive." 439 U.S. at 289, 99 S.Ct. at 535.[8] *See Cuyler v. Adams*, 449 U.S. 433, 443 n. 11, 101 S.Ct. 703, 709 n. 11 (1981). It is not the province of courts to inquire into the motives of the governors of the demanding and asylum states. *United States ex rel. Tyler v. Henderson*, (5th Cir. 1971) 453 F.2d 790, 793. Protection of the right of the demanding state to swiftly try alleged offenders who have left its jurisdiction requires that the courts of the asylum state review the extradition documents summarily. Courts of the asylum state are limited to determining the factors listed in *Doran*, characterized by the Supreme Court as "historic facts readily verifiable." 439 U.S. at 289, 99 S.Ct. at 535.

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[8] These requirements which involve fugitive extradition apply by anaology to cases of non-fugitive extradition. *Narel v. Liburdi* (1981) 185 Conn. 562, 441 A.2d 177, *cert. denied*, 456 U.S. 928, 102 S.Ct. 1974. Thus, the inquiry in the instant case is whether the Respondent is a non-fugitive.

Implicit in this notion of limited inquiry by asylum state courts is the now axiomatic rule that courts in an asylum state are not to pass upon the quality, persuasiveness, or weight of the evidential matter on the basis of which the governor of the demanding state issued the extradition warrant. *Sweeney v. Woodall*, 344 U.S. 86, 73 S.Ct. 139 (1952), *Watson v. Mongomery*, (5th Cir. 1970) 431 F.2d 1083. Whatever the scope of discretion vested in the governor of the asylum state, the courts of the asylum state are bound by Act 4, §2 and, where adopted, by the Uniform Criminal Extradition Act. A governor's grant of extradition is prima facie evidence that the constitutional and statutory requirements have been met. *Michigan v. Doran, supra*, 439 U.S. at 288-289, 99 S.Ct. at 535-536. Given such a clear directive concerning the role of state courts in extradition matters, asylum state courts may not expand their inquiry beyond the four-part test set forth in *Michigan v. Doran. See Statchuk v. Warden*, 53 Md. App. 680, 455 A.2d 1000 (1983); *Petition of Upton*, 387 Mass. 359, 439, N.E.2d 1216 (1982).

Therefore, on a petition for habeas corpus, a court in the asylum state may invalidate a governor's rendition warrant only if it finds an infirmity in one of the four areas into which it may inquire.[9] Against this general background, the facts of the instant case and the holding of the Michigan Supreme Court must be examined.

In the instant case, the Michigan Supreme Court upheld the grant of the Respondent's petition for habeas corpus by finding that the charging papers did not have the effect of

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[9] To further the purpose of extradition, several appellate courts in our sister states have held that "the better rule is to judge the substantiality of the 'charge' for purposes of extradition by consideration of the indictments in conjunction with the supporting requisition documents." *Greenbaum v. Darr*, 220 Kan. 525, 528, 552 P.2d 993, 996 (1976). *Accord, In re Cooper*, 53 Cal.2d 772, 349 P.2d 956 (1960), *cert. denied*, 364 U.S. 294, 81 S.Ct. 104.

charging the Respondents with having committed an act in Michigan intentionally resulting in the crime with which he was charged in Maryland as required by the statute. The Michigan Supreme Court interpreted the statutory language of section 6 very narrowly by declaring that non-fugitive extradition is only possible when an accused has the specific intent that a crime occur.

Pursuant to section 3 of the Uniform Criminal Extradition Act, an "indictment, information, or affidavit made before the magistrate must *substantially charge* the person demanded with having committed a crime under the law of that state." (Emphasis added). The question of intent is one of form; the statute requires *only* that the criminal charge made by the demanding state implicate the accused in an intentional act. The issue of intention need not be resolved solely by considering the indictment, the request for rendition, or the governor's warrant. Indeed, all supporting documents must be examined to determine whether a claim of intent is made. In *Ex parte Harrison*, 568 S.W.2d 339, 342 (Tex. Cv. App. 1978), the court ruled:

> However, we believe the better practice is to judge the substance of the charge upon which the extradition is based by considering the 'charging instrument' in conjunction with the supporting requisition documents. This Court followed that rule, without articulating it, in *Ex parte Malone* [378 S.W.2d 330 (Tex. Crim. App. 1964)]. In that case the indictment charged a violation of the Arkansas Hot Check Law and there were no allegations in the indictment that any acts were committed in Texas or in a third state intentionally resulting in a crime in Arkansas; however, this court stated:
>
> > The affidavits of the prosecuting attorney and the prosecuting witness show that although appellant's acts were committed in this state, they intentionally resulted in a crime in Arkansas, which under, Sec. 6 * * * authorized appellant's surrender on demand of the governor of

> Arkansas, even though he was not in that state at the time of the commission of the crime and had not fled therefrom.
>
> For cases from other jurisdictions which have looked beyond the 'charging instrument' to other requisition documents to determine the adequacy of the 'charge' in extradition cases, see *Greenbaum v. Darr*, 220 Kan 525, 552 P.2d 993 (1976); *State of Kansas v. Holeb*, 188 Neb. 319, 196 N.W.2d 387 (1972); *In re Cooper*, 53 Cal.2d 772, 3 Cal.Rptr. 140, 349 P.2d 956 (1960), appeal dismissed and *cert. den.* 364 U.S. 294, 81 S.Ct. 104, 5 L.Ed.2d 83 (1960); *In re Harris*, 170 Ohio St. 151, 163 N.E.2d 762 (1959); and *Ex parte Arrington*, 270 S.W.2d 39 (Mo. Sup. Ct., 1954).

Further, many jurisdictions[10] have adopted an interpretation of the statutory language as relating only to the sufficiency of the charging documents rather than creating any requirement of specific intent in either the demanding or asylum states. The issue is solely one of whether the extradition papers are sufficient to bring the cause within the governor's statutory, discretionary authority:

> Petitioner argues further that he can be extradited only after a finding by the trial court that he committed an intentional act that resulted in a crime in California. To rebut the allegation of intent in the warrant [failure to pay child support], he offered evidence that he was financially unable to make the support payments. We do not construe the statute to require that the trial court find that the accused committed an intentional act. Rather, the question of intent is relevant only to the sufficiency of the demand for extradition. It is not an element to be proved in the responding state. Instead, it is a jurisdictional fact which must appear from the face of the supporting

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[11] *See also Neuman v. Elrod*, 72 Ill. App.3d 616, 391 N.E.2d 37 (1979); *McCullough v. Darr*, 219 Kan. 477, 548 P.2d 1245 (1976).

> documents. See *Hagel v. Hendrix*, 302 S.W.2d 323 (Mo.App.). Accordingly, the basis for extradition in the instant case is that Conrad has been charged in California in the manner provided in Section 60-1-3 * * *. The trial court was therefore under no duty to admit the evidence offered to prove Conrad was financially unable to make the support payments. *Conrad v. McClearn* (1968), 166 Colo. 568, 571-572, 445 P.2d 222, 224.

The interpretation of the non-fugitive provision of the Uniform Criminal Extradition Act by the Michigan Supreme Court mandates that courts of the asylum state interpret the laws of the demanding state to determine what mental element was included in the offense charged. Further, after determining the specific intent required by a particular demanding state, the court in the asylum state must inquire as to the mental state of the accused. With the addition of these two detailed inquiries, non-fugitive extraditions are no longer summary, executive proceedings, but rather detailed evidentiary proceedings in contravention of *Michigan v. Doran, supra.* Because of its nationwide acceptance,[12] the Uniform Criminal Extradition Act must be construed uniformly to be effective. Indeed, non-fugitive extraditions have been consistently upheld in numerous cases where the accused did not specifically intend the commission of a crime.[13] The interpretation of section 6 by the Michigan Supreme Court defeats the purpose of extradition procedures.

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[12] The Uniform Criminal Extradition Act has been enacted in 48 states.

[13] *See*, 11 Uniform Laws Annotated, "Criminal Law and Procedure," p. 166 (1974).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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